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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMUNICATIONS SECTION
OCT 4 1996

In the Matter of

) MM DOCKET NO. 95-154

CONTEMPORARY MEDIA, INC.

Licensee of Stations WBOW(AM), WZZQ(AM), and
WZZQ (FM), Terre Haute, Indiana

Order to Show Cause Why the Licenses for Stations
WBOW(AM), WZZQ(AM), and WZZQ(FM) Terre Haute,
Indiana, Should Not Be Revoked

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CONTEMPORARY BROADCASTING, INC.

Licensee of Station KFMZ(FM), Columbia Missouri, and
Permittee of Station KAAM-FM, Huntsville, Missouri
(unbuilt)

Order to Show Cause Why the Authorizations for
Stations KFMZ(FM), Columbia, Missouri; and KAAM-FM,
Huntsville, Missouri, Should Not Be Revoked

LAKE BROADCASTING, INC.

Licensee of Station KBMX(FM), Eldon, Missouri and
Permittee of Station KFXE(FM), Cuba, Missouri

Order to Show Cause Why the Authorizations for
Stations KBMX(FM), Eldon, Missouri; and KFXE(FM),
Cuba, Missouri, Should Not Be Revoked

LAKE BROADCASTING, INC.

) File No. BPH-921112MH

For a Construction Permit for New FM Station on
Channel 244A at Bourbon, Missouri

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

**LICENSEES' REPLY TO
MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

CONTEMPORARY MEDIA, INC. ("CMI"), CONTEMPORARY BROADCASTING, INC. ("CBI") and LAKE BROADCASTING, INC. ("LBI") (collectively, the "Licensees"), by their counsel, hereby reply to the Mass Media Bureau's (the "Bureau") Proposed Findings of Fact and Conclusions of Law filed in this proceeding on September 9, 1996.

1. As will be demonstrated, the Bureau's Proposed Findings of Fact on Issues 1 and 2 present a grossly inaccurate and incomplete

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version of the record evidence herein, replete with mischaracterizations of evidence and material omissions. Consequently, the Bureau's Proposed Conclusions of Law are factually and legally insupportable.¹ Particularly since the Presiding Judge explicitly admonished the parties to provide a fair and complete review of the record in their respective Findings (Tr. 637), it is deplorable that the Bureau chose to slant its Findings and ignore the Presiding Judge's instruction. In any case, as will be shown, the Bureau's Findings and Conclusions cannot withstand even-handed scrutiny, and as concluded by the Licensees in their own Findings and Conclusions, there should be no revocation of the broadcast licenses and construction permits held by the Licensees.

**I. Issue 1: The Impact of Michael Rice's
Conviction on the Licensees' Qualifications to
Remain Commission Licensees**

2. Initially, at BF¶5, the Bureau erroneously states that the felonies for which Michael Rice was convicted involved "six" juveniles. And, at BC¶2, the Bureau repeats this "undisputed" fiction. The Bureau is simply wrong; Mr. Rice's felony convictions were based on the allegations of five, not six accusers, all of whom were teenagers. The Bureau's erroneous count appears to have been made as a result of its reliance on stale information gleaned from a §1.65 statement filed by LBI on June 14, 1991 (See BF, note

¹ The Bureau's Proposed Findings of Fact will be referenced herein as "BF¶__", while the Bureau's Proposed Conclusions of Law will be referenced herein as "BC¶__". The Licensees' Proposed Findings of Fact will be referenced herein as "LF¶__" and their Proposed Conclusions of Law will be referenced herein as "LC¶__".

1). The Bureau, instead, should have looked to the Second Amended Information, dated July 5, 1994 (Bur. Exh. 1, pp. 7-12), which sets forth each charge on which Mr. Rice was ultimately convicted. Because the Bureau redacted the initials of the accusers from the copy of the Second Amended Information that it placed in evidence (Bur. Exh. 1, pp. 7-12), a copy of an unredacted Second Amended Information reflecting the initials of five accusers (CZ, MCF, KM, MM and TF) is attached hereto to set the Bureau straight on this matter.

3. Similarly, at BF¶5, the Bureau incorrectly states that Mr. Rice was sentenced to 84 years in prison, when, in fact, Mr. Rice was sentenced to serve the terms concurrently for a total of eight years. Bur. Exh. 1, pp. 21-22. Although the Bureau chooses to ignore the fact that Mr. Rice has, at most, an eight-year prison term, it is important that the Presiding Judge focus on the correct maximum length of Mr. Rice's incarceration, as further discussed in Paragraph 5 below.

4. Even more outrageous and unfair is the Bureau's hyperbolic contention that the Licensees' mitigation evidence concerning Mr. Rice's misconduct was either non-existent or "so trivial as to be of no consequence when compared to the magnitude of the crimes for which Rice was convicted". BC ¶4. In fact, the record contains substantial mitigation evidence of material consequence herein.

5. First, with respect to the Bureau's various inflammatory characterizations of Mr. Rice's felony convictions as "heinous" or "egregious", as reflected in LC¶139, the judge presiding over Mr. Rice's criminal case ordered him to serve 8 years out of a

potential 84 years, thus demonstrating that the judge found sufficient reason for leniency. That fact, the Licensees submit, is prima facie mitigative with respect to the seriousness of Mr. Rice's felony convictions.²

6. Second, the Licensees' longstanding, essentially unblemished broadcast record before the Commission (LF¶17) -- a fact that speaks volumes for the lack of nexus between Mr. Rice's misconduct and the Licensees' ability to conduct their operations in accordance with Commission rules and policies -- must not be devalued, as the Bureau would have it.³

7. Third, notwithstanding the Bureau's dismissive treatment at LC Note 5, the four individuals who vouched for Mr. Rice's reputation in the local and broadcast community (LF¶18-22, LC¶135) offered keen insights into Mr. Rice's character which are anything but "trivial". Indeed, these individuals, each a professional in his field, describe Michael Rice as an honest, conscientious broadcaster, who has striven to provide a high quality broadcast service to the Stations' communities of license. Instead of being

² To be clear, the Licensees do not contend that Mr. Rice's convictions are not serious. However, the Licensees believe, for the reasons set forth in LC¶¶117-146 that -- contrary to the Bureau's view -- license revocation cannot and should not lawfully be inevitable when, as here, an individual who is not a licensee engages in non-broadcast related felonious misconduct which has not been shown to have any nexus with the licensee's ability to conduct itself in accordance with Commission rules and policies and in a truthful manner before the Commission.

³ Similarly, if the additional substantial evidence of the Licensees' operation of their stations in the public interest (which the Presiding Judge rejected (LF, note 4)) were in the record, that too would demonstrate the lack of nexus between Mr. Rice's misconduct and the Licensees' operation of stations in the public interest.

trivial, these statements provide vital information and a demonstration of how the public interest would be served by not revoking the licenses of the Licensees.

8. Fourth, the record is clear that neither the Licensees' Stations nor other principals or employees of the Licensees were in any way involved in the misconduct for which Mr. Rice was convicted (LF¶23) -- a significant fact, completely ignored by the Bureau, which again should be weighed in the Presiding Judge's mitigation analysis.

9. Fifth, the Bureau contends that Mr. Rice's misconduct is not remote in time because he is still in prison (BC¶4) -- a total non sequitur. The fact is, six years have passed since Mr. Rice was accused of misconduct for which he was convicted, and there is no allegation of any misconduct by Mr. Rice after October 1990. LF¶¶14, 24. Thus, the mitigation factor of remoteness in time clearly favors the Licensees, contrary to the Bureau's view.

10. Sixth, in connection with the rehabilitation factor of measures taken to prevent further misconduct, the record reflects that Mr. Rice underwent substantial in-patient psychiatric care and continued out-patient psychotherapy before entering prison; and Missouri law requires that he successfully complete a rehabilitative program prior to his release from prison. LF¶¶29, 45; LC¶135. These rehabilitative efforts, past and future, i.e., measures to prevent further misconduct, also should be counted favorably for the Licensees, contrary to the Bureau's wishes.

11. Finally, in further connection with remedial efforts, the Bureau gives short shrift to the fact that the Licensees' respec-

tive Boards of Directors took actions to remove Mr. Rice from a managerial and policymaking role in the operation of the Licensees and their stations, and placed Janet Cox at the helm as Chief Executive Officer. LF¶¶29-31. While the Bureau contends that Mr. Rice's ability to control the corporations remains "undiminished" (BC¶4), that argument is strictly theoretical and speculative. To the contrary, the record evidence shows that Mr. Rice, in fact, has been stripped of that ability ever since the corporate resolutions were adopted and Mrs. Cox was named CEO. To this day, Mr. Rice remains without a managerial or policymaking role in the Licensees or their stations.

12. In sum, contrary to the Bureau's Conclusions on Issue 1, the foregoing showing of mitigation/rehabilitation is weighty and cannot be ignored. As shown above, and in the Licensees' Conclusions at ¶¶ 133-142, these facts lead ineluctably to the conclusion that there is simply no legal justification for license revocation in this case. Thus, South Carolina Radio Fellowship, 6 FCC Rcd 340 (ALJ 1991), aff'd., 6 FCC Rcd 4823 (1991), the single case on which the Bureau relies as precedent, is completely inapposite because there, a key consideration was the fact that the licensee, whose principal was convicted of drug-trafficking, unlike here, failed to make any showing of mitigation or rehabilitation in the revocation proceeding. Here, as demonstrated above and in the Licensees' Findings and Conclusions, there is ample mitigation evidence to overcome any realistic claim that revocation of the Licensees' licenses would somehow serve the public interest.

II. Issue 2: Whether the Licensees Misrepresented Michael Rice's Involvement in Stations After April 1991.

13. Before addressing the substance of the Bureau's Findings and Conclusions on Issue 2, the Licensees wish to stress that the Bureau failed to squarely address -- despite the Presiding Judge's clear directive to do so (see Tr. 638) -- whether candor findings and conclusions can be made herein when only a misrepresentation issue was designated and tried. Indeed, the only tacit recognition which the Bureau gave to this matter was in LC Note 8, where the Bureau seems to suggest that KOED, Inc., 3 FCC Rcd 2821 (Rev. Bd. 1988), stands for the proposition that a separate candor issue need not be designated to find lack of candor when only a misrepresentation issue has been tried. If that is the Bureau's position, its analysis is wrong.

14. The cited KOED case is only a Review Board decision, which held (at 3 FCC Rcd 2822 ¶2) that KQEC had engaged in misrepresentations. Thus, the discussion about whether the designated misrepresentation issue (see 59 RR 2d 721 (1986)) could encompass findings and conclusions as to lack of candor is purely dicta. While the Review Board thought that, given the overall context of the remand proceeding, the added issue was intended to focus broadly on deceptive intent, so that candor findings and conclusions could be made, it expressly stated that it was not "addressing exceptors' contentions that any misrepresentation issue automatically subsumes lack of candor and that lack of candor is always in issue". 3 FCC Rcd 2834, n. 17. Moreover, when the Commission affirmed the Review Board in 5 FCC Rcd 1784 (1990), it

finessed the point by holding (at 1784, ¶3) that "[t]he record indicates that KQED committed serious misconduct by lacking candor about and misrepresenting the reasons for deactivation of KQEC...."

15. In other words, both the Review Board and the Commission held that KQED was disqualified under the designated misrepresentation issue; whether KQED also lacked candor was immaterial. Under these circumstances, and contrary to the Bureau's apparent view, KQED does not stand for the proposition that one can be disqualified for lack of candor when only a misrepresentation issue is designated. Indeed, for the reasons set forth at LC ¶¶148-149, candor findings and conclusions clearly cannot be made under Issue 2 in this proceeding.

16. Turning to the substance of the Bureau's selective Findings and Conclusions on Issue 2, any objective reader would be left with two distinct impressions, both of which are patently false: (1) Only three witnesses -- Leon Paul Hanks, John Rhea and Janet Cox -- testified in this case; and (2) only Messrs. Hanks and Rhea, to the exclusion of Mrs. Cox, presented credible testimony.

17. Surprisingly, the Bureau's Findings neither refer to the testimony of General Managers Richard Hauschild, Kenneth Brown and Daniel Leatherman, nor even acknowledge the fact that these three individuals testified! Obviously, the Bureau, rather than providing an accurate assessment of the record, was intent on ignoring all of the evidence unfavorable to its case. Indeed, the Bureau's disingenuous distortion of the hearing record renders its

Proposed Findings and Conclusions on this issue not only unconvincing, but also wholly unreliable.⁴

18. Clearly, to accomplish its objective of casting the Licensees in a completely unfavorable light, the Bureau had to totally ignore Messrs. Hauschild, Brown and Leatherman, each of whom testified that he managed the operations of his respective station(s) in consultation with Janet Cox and without involvement by Michael Rice in managerial affairs (LF¶¶ 58-68)⁵, all of which

⁴ By way of examples, the Bureau takes Janet Cox to task because in her meetings with the stations' employees shortly after Mr. Rice's hospitalization, she did not inform them that after Mr. Rice got out of the hospital his non-involvement in station operations would continue. See LF¶19, LC¶9. Yet, Mrs. Cox never stated that Mr. Rice's non-involvement would last only as long as he was in the hospital. According to her testimony, she did not state any terminal date or time frame for Mr. Rice's exclusion from involvement in station matters. **Tr. 209.**

See also LC¶16 where the Bureau claims that the stations' employees were never told that Mr. Rice was not the boss. Had the Bureau addressed Mr. Hauschild's testimony, they could not have made such a sweeping erroneous conclusion. Importantly, Mr. Hauschild recalled being told by either Janet Cox or Scott Boltz, his predecessor, that Michael Rice would not be involved in the station pending the outcome of his legal proceeding. **Tr. 630.**

Also, with respect to Mrs. Cox's hiring of programming consultant, David Lange, the Bureau not only mischaracterizes Mrs. Cox's testimony (at **Tr. 219-220**) in an effort to allege a causal link (which did not exist) between Mr. Rice's incarceration and Mrs. Cox's hiring of a programming consultant, but also ignores her testimony that before she ever used Mr. Lange's services, she had used the services of various other outside "Rock Johns" for programming advice, but then decided that she wanted a professional consultant's expertise and, therefore, hired Mr. Lange. In short, contrary to the Bureau's speculation, Mr. Rice's unavailability had nothing to do with Mrs. Cox's decision to use Mr. Lange's services.

⁵ At hearing, the Bureau never directly challenged, through cross examination, Mr. Hauschild or Mr. Brown's testimony given as part of the Licensees' direct case. With respect to Mr. Leatherman, who was cross-examined, the record reflects that he easily withstood the Bureau's efforts to draw out inconsistencies or challenge his credibility.

was consistent with the Licensees' \$1.65 reports filed with the Commission.

19. Instead, the Bureau focuses almost exclusively on its two back-door⁶ rebuttal witnesses, Messrs. Hanks and Rhea, treating their testimony as gospel, and not even acknowledging the possibility that its witnesses were inherently unreliable. As the record reflects, both Hanks and Rhea are disgruntled ex-employees -- Mr. Hanks with a confessed desire to get everything he can from CBI in a pending lawsuit against the Licensee because of his alleged inappropriate and "therefore unfair" termination, and Mr. Rhea, with a witness-stand admission that he harbored animosity toward Mrs. Cox and Mr. Rice for having been fired -- a career setback which he acknowledged. LF¶¶70, 74. Moreover, Mr. Hanks' testimony contained the significant admission that he has a tendency to "exaggerate". LF¶71. And, Mr. Rhea's credibility came into serious question when he initially denied that he was ever the subject of employee complaints at WZZQ. LF¶78. Thus, even though the Bureau chose to ignore the strong bias and witness stand admissions adversely impacting the credibility of both Mr. Hanks and Mr. Rhea, the Presiding Judge should not do so.

20. Another major flaw in the Bureau's approach to Issue 2 is that it is essentially aimed at trying to demonstrate that Mr. Rice actually asserted influence over station programming, personnel and

⁶ The Licensees have noted on the record their exceptions to the Judge's rulings permitting the rebuttal testimony of Messrs. Hanks and Rhea on Issue 2 when the Bureau neglected even to attempt to meet its burden of proof on this issue through witness testimony in its direct case.

financial matters during the time frame in which the Licensees reported to the Commission that Mr. Rice was not involved in managerial and policy decisions at the stations -- as if answering that question in the affirmative is dispositive. However, it is critical to draw a distinction here. What Mr. Rice actually did or did not do in connection with the stations is not determinative of whether the Licensees misrepresented Mr. Rice's activities under Issue 2.⁷ What really matters is only whether those responsible for reporting to the Commission on behalf of the Licensees -- Janet Cox, in most cases -- believed in good faith that the contents of the Licensees' reports to the Commission were accurate. In other words, if they maintained a good faith belief that what was reported was accurate, they did not have the intent to deceive, a required ingredient of misrepresentation. See LC¶¶174-175 and cases cited therein.

21. Importantly, even the Bureau does not dispute the veracity of the §1.65 reports filed during Mr. Rice's six-month hospitalization, since the record contains no evidence that Mr. Rice had any involvement in the station operations during that period of time.

22. As to the post-hospitalization §1.65 reports which deleted the reference to Mr. Rice's not having a "consultative role" in station operations, but maintained that he was not

⁷ Mr. Rice's actual involvement at the station only matters under Issue 1 with respect to the mitigation factor of efforts made by the licensee to remove the wrongdoer, i.e., were the efforts made by the Boards of Directors and Mrs. Cox to exclude Mr. Rice from management of the stations adequate under this mitigation factor?

involved in managerial and policy matters, the Licensees submit that, contrary to the Bureau's Findings and Conclusions, the record reflects that, with respect to the various incidents in which Mr. Rice allegedly injected himself into a personnel or programming matter, Janet Cox (a) never sanctioned, (b) had any knowledge of, or (c) disputed altogether, Mr. Rice's alleged involvement.

23. The record is clear that the Mr. Rice's station-related activities which Mrs. Cox sanctioned were his non-managerial, intermittent technical and engineering projects, which led to her modification of the §1.65 reports.⁸ Indeed, of the various alleged incidents in which Mr. Rice purportedly flexed some managerial muscle regarding personnel or programming matters at the Terre Haute or Columbia stations⁹, such incidents involved one-on-one conversations between him and Mr. Hanks or Mr. Rhea. Thus, even assuming, arguendo, that Mr. Hanks and Mr. Rhea testified truthful-

⁸ The Bureau also argues that Mr. Rice's check-signing authority, of which Mrs. Cox had knowledge, is inconsistent with the §1.65 reports. The Bureau's distorted view of a ministerial function notwithstanding, the record shows that Mr. Rice signed checks very infrequently (only when Malcolm Rice was unavailable to sign) and only at Mrs. Cox's request. Similarly, the Bureau contends that Mr. Rice's responses to three unsolicited inquiries about the availability for sale of one of the Licensees' construction permits were inconsistent with the §1.65 reports. However, the record does not establish that Mrs. Cox was ever aware that Mr. Rice wrote the letters at the time. Moreover, who else but Mr. Rice, the controlling stockholder had the authority to reject a purchase proposal? Surely, this was an extraordinary decision, not one reflecting on management, policy or day-to-day decisionmaking in connection with the operation of the stations.

⁹ Importantly, the record reflects no claims that Mr. Rice involved himself in managerial matters at LBI's Station KBMX. Indeed, Mr. Leatherman, overlooked by the Bureau, testified that precisely the opposite was the case. LF ¶63. Mr. Leatherman, who no longer is employed by the Licensees, clearly had no motive to prevaricate in his testimony.

ly, Mrs. Cox only learned of Mr. Rice's occasional intrusions after-the-fact. And, as her no-nonsense demeanor and hearing testimony (see LF¶¶52-53) reflected, she viewed Mr. Rice's occasional comments about personnel to be expressions of his opinion, not orders for her to follow.

24. Moreover, even though, as the record reflects, Mrs. Cox had, on occasion, views which may have been consistent with opinions allegedly expressed by Mr. Rice to Hanks or Rhea on certain matters (e.g., a satellite programming service was too expensive; Mr. Rhea's ineffective stewardship as general manager of WZZQ, among other reasons, was grounds for firing; Mike Steele's arbitrary change in reporting for R&R was grounds for firing; Mark Savage's refusal to follow the station's programming format, among other problems, was grounds for firing; Steven Holler's inexperience was grounds for firing; and, Chip Ramsey's negative attitude was grounds for firing), it cannot be concluded that Mrs. Cox was following orders of Mr. Rice in these instances.¹⁰ There is absolutely no evidence supporting such a conclusion -- an element of proof on which the Bureau has the burden, but has failed to carry. Indeed, her straightforward testimony indicates that she made decisions based on reasonable business-like considerations: What was the budget line? How did an employee fit in? Could a replacement be found? LF¶53. Importantly, Mrs. Cox made it clear that Mr. Rice's opinions were not among these considerations; in fact, Mrs. Cox testified that she disregarded his complaints about

¹⁰ See LC¶ 159 et seq. for discussion of post hoc, ergo propter hoc fallacy of Bureau's logic, which the Licensees anticipated.

on-air personnel's performance. LF¶52¹¹ Moreover, with respect Mr. Rice's post-incarceration communications, Mrs. Cox was clear and unequivocal under cross-examination. She did not take his comments as orders for her to heed. Rather, in her view, some of Mr. Rice's comments were "off-the-wall" and simply reflected the fact that he had substantial idle time in prison. Tr. 309-314.

25. In sum, Mrs. Cox's testimony, corroborated by the testimony of Messrs. Leatherman, Brown and Hauschild, clearly reflects that she believed, in good faith, and demonstrated that belief by her actions as CEO, that she, not Michael Rice, was in charge of managerial and policy matters for the stations (LF¶¶ 42-68). Therefore, it must be concluded that no intentional misrepresentation was made to the Commission in any §1.65 report concerning Mr. Rice's activities. Even assuming, arguendo, any of the reports were not completely accurate, it was not because there was a grand scheme between Mrs. Cox and Mr. Rice to tell the Commission one thing, but to do something contrary -- and the Bureau has not proven otherwise. Indeed, the preponderance of the evidence demonstrates that Mrs. Cox, with the assistance of her General Managers, has shouldered the entire responsibility of overseeing the operation of the Licensees' radio stations since Mr. Rice's formal charging in April 1991, with the good faith belief that it is her

¹¹ The record also reflects that Mr. Rice's so-called "directives" concerning KFMZ personnel who he allegedly wanted fired were never directed to Mr. Hauschild or Mrs. Cox. And, the record is also clear that in each case, these "directives" had nothing to do with the fate of the particular KFMZ employees, some of whom left voluntarily while others were terminated at Mr. Hauschild's direction and for reasons wholly unrelated to Mr. Rice's complaints. LF¶¶ 104-110.

job, not Mr. Rice's, to do so. Even Mr. Rhea conceded that during his December 1991-December 1992 tenure as WZZQ General Manager, Mr. Rice was an "absentee" owner. Therefore, contrary to the Bureau's ultimate conclusion on Issue 2, not only has the Bureau failed to meet its burden of proof, but also, the evidence actually weighs in the Licensees' favor; no intentional misrepresentations were made in the Licensees' §1.65 statements and the Presiding Judge should so hold.

III. Conclusion

26. With respect to Issue 1, the Licensees have demonstrated in their Proposed Finding and Conclusions (and above), that contrary to the Bureau's position, there is no lawful basis to revoke the Licensees' licenses. Even if the Commission's Character Policy could withstand scrutiny in connection with its applicability to this case, contrary to the Bureau's view, the Licensees have offered sufficient mitigation evidence to conclude that their licenses should not be revoked.

27. With respect to Issue 2, as the Presiding Judge is fully aware, the Bureau has the burden of proving its case by a preponderance of the evidence, and where such evidence is lacking in the record on any necessary element of the Bureau's case, the Licensees must prevail as a matter of law. A complete review of the hearing record in this case -- not the Bureau's selective version of it -- leads to the conclusion that the Bureau has not carried its burden, and that, indeed, the weight of the evidence, including the credibility of the witnesses, favors the Licensees. However, the

Presiding Judge need not even go that far. The absence of proof that the Licensees had any intent to deceive the Commission in their §1.65 reports is sufficient to support completely a decision that neither license revocation nor assessment of a monetary forfeiture is warranted under Issue 2.

Respectfully submitted,

**CONTEMPORARY MEDIA, INC.
CONTEMPORARY BROADCASTING, INC.
LAKE BROADCASTING, INC.**

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Dated: October 4, 1996

SECOND AMENDED INFORMATION

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION

STATE OF MISSOURI) I-II-DEVIATE SEXUAL ASSAULT FIRST DEGREE
) III-DEVIATE SEXUAL ASSAULT SECOND DEGREE
 against) IV-VI-SODOMY
) VII-X-DEVIATE SEXUAL ASSAULT FIRST DEGREE
MICHAEL STEPHEN RICE) XI-DEVIATE SEXUAL ASSAULT SECOND DEGREE
) XII-SODOMY
)
) CIRCUIT COURT NO. CR190-1787FX

COUNT I.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that between December, 1985 and August, 1986, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with C.Z., to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT II.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that between August, 1986 and August 11,

1987, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with C.Z., to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT III.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.080 RSMo., committed the class D felony of deviate sexual assault in the second degree punishable upon conviction under Section(s) 558.011.1(4) and 560.011 RSMo., in that between August 12, 1987 and August 11, 1988, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with C.Z., to whom defendant was not married and who was then sixteen years old.

COUNT IV.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.060 RSMo., committed the class B felony of sodomy punishable upon conviction under Section(s) 558.011.1(2) RSMo., in that during October, 1988, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.C.F., to whom the defendant was not married, and who was then less than fourteen years old.

COUNT V.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.060 RSMo., committed the class B felony of sodomy punishable upon conviction under Section(s) 558.011.1(2) RSMo., in that during October, 1988, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.C.F., to whom the defendant was not married, and who was then less than fourteen years old.

COUNT VI.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.060 RSMo., committed the class B felony of sodomy punishable upon conviction under Section(s) 558.011.1(2) RSMo., in that during November, 1988, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.C.F., to whom the defendant was not married, and who was then less than fourteen years old.

COUNT VII.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that during September, 1990, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with K.M. to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT VIII.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that during October, 1990, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with K.M. to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT IX.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that between June 1, 1988, and April 27, 1989, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.M., to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT X.

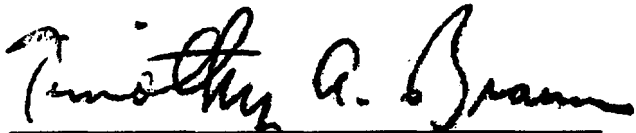
The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.070 RSMo., committed the class C felony of deviate sexual assault in the first degree punishable upon conviction under Section(s) 558.011.1(3) and 560.011 RSMo., in that between June 1, 1988 and April 27, 1989, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.M., to whom defendant was not married and who was then fourteen or fifteen years old.

COUNT XI.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.080 RSMo., committed the class D felony of deviate sexual assault in the second degree punishable upon conviction under Section(s) 558.011.1(4) and 560.011 RSMo., in that between April 28, 1989, and February 28, 1990, in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with M.M., to whom defendant was not married and who was then sixteen years old.

COUNT XII.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant MICHAEL STEPHEN RICE in violation of Section(s) 566.060 RSMo., committed the class B felony of sodomy punishable upon conviction under Section(s) 558.011.1(2) RSMo., in that during October, 1989 in the County of St. Charles, State of Missouri, the defendant had deviate sexual intercourse with T.F., to whom defendant was not married, and who was then less than fourteen years old.



Prosecuting Attorney of the County
of St. Charles, State of Missouri

BY: _____

Rebecca Shaffar
Assistant Prosecuting Attorney
Missouri Bar No. 38130

Rebecca Shaffar, Assistant Prosecuting Attorney of the County of St. Charles, State of Missouri, being duly sworn, upon oath, says that the facts stated in the above Information are true, according to his best information, knowledge and belief.

Rebecca Shaffar
Assistant Prosecuting Attorney

Sworn and subscribed before me this ____ day of _____, 1994.

Division Clerk of the Circuit Court
of the County of St. Charles, Missouri

BY: _____
Deputy Clerk

WITNESSES:

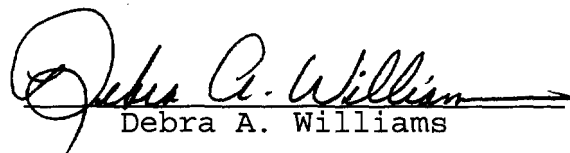
C [REDACTED] Z [REDACTED]
Det. Joel Fann, St. Charles Sheriff's Dept., St. Charles, MO
Officer Thomas Kerns, O'Fallon Police Dept., O'Fallon, MO
M [REDACTED] F [REDACTED]
K [REDACTED] M [REDACTED]
M [REDACTED] M [REDACTED]
Gene Ackmann, [REDACTED]
T [REDACTED] F [REDACTED]
Sharon Fiorini, [REDACTED]
Bert Miller, [REDACTED]

CERTIFICATE OF SERVICE

I, Debra A. Williams, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 4th day of October, 1996, I have caused to be hand-delivered, a copy of the foregoing "Licensees' Reply to Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" to the following:

Hon. Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 228
Washington, D.C. 20554

Robert A. Zauner, Esq.
D. Anthony Mastando, Esq.
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554


Debra A. Williams